

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

USA,

Plaintiff,

v.

HOLMES,

Defendant.

Case No. [10-cr-00108-SI-1](#)

ORDER DENYING STAY

Re: Dkt. No. 32

Defendant Stephen Richard Holmes filed a motion to vacate, set aside, or correct his 151-month sentence for unarmed bank robbery pursuant to 28 U.S.C. § 2255, relying on the Supreme Court's decision in *Johnson v. United States*, 135 S. Ct. 2551 (2015). Dkt. No. 25. The government filed a combined opposition to defendant's § 2255 motion and request to stay the proceedings pending the Supreme Court's resolution of *Beckles v. United States*, No. 15-8544, 2016 WL 1029080 (cert. granted June 27, 2016). Dkt. No. 32. Defendant filed an opposition to the government's request to stay the proceeding. Dkt. No. 33.

The Court issued an order noting that defendant's post-*Johnson* Guidelines range is relevant to its prejudice determination in deciding whether to stay the proceedings. Dkt. No. 33. The Court accordingly ordered the parties to meet and confer and file either a joint statement or separate statements regarding this matter on or before August 26, 2016. *Id.* The parties filed a joint statement on August 23, 2016, agreeing that defendant's post-*Johnson* Guidelines range is 46-57 months. Dkt. No. 35.

Defendant has been in federal custody since December 30, 2009. Stay Oppo. (Dkt. No. 33) at 5 (citing PSR at 1). Not accounting for good-time credits, he has already served 79 months in prison, which falls outside the post-*Johnson* Guidelines range of 46-57 months. *Id.* Thus, on

1 the present record, defendant has shown a fair possibility that he will be prejudiced by a stay of the
2 proceedings pending a decision of the Supreme Court in *Beckles*. This reasoning accords with
3 prior orders of this Court; this Court denied a stay where defendant's anticipated release date was
4 December 14, 2016, and granted a stay where defendant's anticipated release date was August 26,
5 2021. See *USA v. Bernard*, 12-cr- 00780-SI, Dkt. No. 41; *USA v. Nottingham*, 14-cr-00553-SI,
6 Dkt. No. 33.

7 Given the liberty interest at stake, the Court denies the request for stay. Should defendant
8 wish to file a reply to the government's opposition to his § 2255 motion he may do so **by**
9 **September 23, 2016.**

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11 **IT IS SO ORDERED.**

12 Dated: August 25, 2016

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14 SUSAN ILLSTON
15 United States District Judge
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